

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ACE AMERICAN INSURANCE
COMPANY, and DUNBAR ARMORED,
INC., t/u/o, t/o/u DIANE HINES

Plaintiffs,

MCDONALD'S CORPORATION

Defendant.

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Civil Action No.: 1:11-CV-03150-BEL

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**PLAINTIFFS, ACE AMERICAN INSURANCE CO.'S AND DUNBAR ARMORED, INC.'S,
RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO STRIKE PLAINTIFFS RULE
26(a)(2) EXPERT DISCLOSURE**

Plaintiffs, Ace American Insurance Company and Dunbar Armored, Inc., by and through their undersigned counsel, Colin Bell and Franklin & Prokopik, P.C., hereby file this Response in Opposition to Defendant's Motion to Strike Plaintiffs' Rule 26(a)(2) Expert Disclosure, and in support state:

1. The parties took part in a telephone conference with this Honorable Court on November 23, 2011. A letter memorializing the conversation, is attached hereto as **Exhibit A**.

2. Pursuant to the November 23, 2011 telephone conference, Plaintiffs were to provide a Rule 26 report prepared by their liability expert only, prior to the May 9, 2012 deadline. Plaintiffs have since decided not to utilize a liability witness, unless they determine that one will be necessary in rebuttal to Defendant's experts, which have yet to be named.

3. Pursuant to U.S.Dist.Ct.Rules Md., Civil Rule 104, "Unless otherwise ordered by the Court a party must provide the disclosure required by Fed. R. Civ. P. 26(a)(2)(B) only as to experts retained or specially employed by a party to provide expert testimony. The disclosures need not be provided as to

hybrid fact/expert witnesses such as treating physicians.”

4. Plaintiffs’ Rule 26(a)(2) Expert Disclosure was provided to Defendant’s counsel by e-mail on May 14, 2012. A copy of the Expert Disclosure is attached hereto as **Exhibit B**.

5. All of the experts identified in Plaintiffs’ expert disclosure are Plaintiff, Diane Hines’ treating physicians. Therefore, the witnesses are hybrid witnesses under U.S.Dist.Ct.Rules Md., Civil Rule 104, and are not required to be identified as expert witnesses pursuant to Rule 26(a)(2).

6. In the event that this Honorable Court determines that Plaintiffs were require to designate the expert/hybrid witnesses pursuant to Rule 26(a)(2), Defendant was not prejudiced by this four (4) day delay, as it was agreed during the November 23, 2011 telephone conference (See Exhibit A), the depositions of all fact witnesses are not to be scheduled until after the settlement conference, which is scheduled to take place on August 27, 2012.

WHEREFORE, Plaintiffs, Ace American Insurance Company and Dunbar Armored, Inc. Respectfully request that Defendant’s Motion to Strike Plaintiffs’ Rule 26(a)(2) Disclosure be denied, and award Plaintiffs such other and further relief as this Court deems appropriate.

/s/
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of June, 2012 a copy of the foregoing Response in Opposition to Defendant's Motion to Strike Plaintiffs' Rule 26(a)(2) Disclosures was sent via electronic mail as well as mailed first class postage prepaid to: Ronald M. Cherry, Esquire, Bonner, Kiernan, Trebach & Crociata, LLP, 7825 York Road, Baltimore, Maryland 21204, and Joseph J. Bottiglieri, Esquire, Bonner, Kiernan, Trebach & Crociata, LLP, 1233 20th Street NW, 8th Floor, Washington, D.C. 20036, *Attorneys for Defendant.*

_____/s/_____
Colin Bell

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ORDER

UPON CONSIDERATION OF Defendant McDonald's Corporation's Motion to Strike Plaintiffs' Rule 26(a)(2) Disclosures, Plaintiffs' Response in Opposition, and any hearing thereon,

It is this _____ day of _____, 2012, by the U.S. District Court of Maryland

ORDERED that Defendant McDonald's Corporation's Motion to Strike Plaintiffs' Rule 26(a)(2) Disclosure is hereby **DENIED**.

JUDGE

cc: Colin Bell, Esq.
Ronald M. Cherry, Esq.